



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-834-811]

#### **Silicon Metal from the Republic of Kazakhstan: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of silicon metal from the Republic of Kazakhstan (Kazakhstan). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Justin Neuman, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0486.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on July 27, 2020.<sup>1</sup> On September 8, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now November 27, 2020.<sup>2</sup> For a complete description of the events that followed the initiation of this investigation, *see the*

---

<sup>1</sup> See *Silicon Metal from the Republic of Kazakhstan: Initiation of Countervailing Duty Investigation*, 85 FR 45173 (July 27, 2020) (*Initiation Notice*).

<sup>2</sup> See *Silicon Metal from the Republic of Kazakhstan: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 55412 (September 8, 2020).

Preliminary Decision Memorandum.<sup>3</sup> A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

### Scope of the Investigation

The product covered by this investigation is silicon metal from Kazakhstan. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the *Preamble* to Commerce's regulations,<sup>4</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>5</sup> No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*.

### Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>6</sup>

---

<sup>3</sup> See Memorandum, "Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Silicon Metal from the Republic of Kazakhstan," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>4</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>5</sup> See *Initiation Notice*, 85 FR at 45174.

<sup>6</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.<sup>7</sup> For further information, *see* "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Decision Memorandum.

### Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigations of silicon metal from Iceland and Bosnia and Herzegovina based on a request made by the petitioners.<sup>8</sup> Consequently, the final CVD determination will be issued on the same date as the final AD determinations in those cases, which are currently scheduled to be issued no later than February 22, 2021, unless postponed.

### All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated subsidy rate for all other producers or exporters.

---

<sup>7</sup> See sections 776(a) and (b) of the Act.

<sup>8</sup> See Petitioners' Letter, "Silicon Metal from Kazakhstan: Petitioners' Request for Alignment of Countervailing Duty Investigation Final Determination Deadline with Antidumping Duty Final Determination Deadlines in Silicon Metal from Bosnia and Herzegovina and Silicon Metal from Iceland," dated October 30, 2020.

In this case, the countervailable subsidy rate calculated for the investigated companies is based entirely on facts available under section 776 of the Act. However, there is no other information on the record upon which to determine an all-others rate. As a result, we have used the rate assigned to the mandatory respondents as the all-others rate. This method is consistent with Commerce's past practice.<sup>9</sup>

#### Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

<b>Company</b>	<b>Subsidy Rate</b>
Tau-Ken Temir LLP and JSC NMC Tau-Ken Samruk <sup>10</sup>	120.00 percent
All Others	120.00 percent

#### Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

#### Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of the public announcement of, where there is no public announcement, within five days of the date of publication of the notice

---

<sup>9</sup> See, e.g., *Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>10</sup> As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Tau-Ken Temir LLP and JSC NMC Tau-Ken Samruk: Silicon Metal LLP, Metallurgical Combine KazSilicon LLP, National Welfare Fund "Samruk-Kazyna" JSC, "Ekibastuz GRES-2 station" JSC, and JSC KEGOC.

of preliminary determination in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied adverse facts available (AFA) to the individually examined company Tau-Ken Temir LLP/JSC NMC Tau-Ken Samruk in this investigation in accordance with section 776 of the Act, and the applied AFA rate is based solely on information provided by the Government of Kazakhstan, there are no calculations to disclose.

#### Verification

Because TKT did not provide information requested by Commerce in this investigation and Commerce preliminarily determines that the company has been uncooperative, Commerce will not conduct verification.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be announced at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.<sup>11</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

---

<sup>11</sup> See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>12</sup>

#### International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: November 27, 2020.

Jeffrey I. Kessler,  
Assistant Secretary for Enforcement and Compliance.

---

<sup>12</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

## **Appendix I**

### **Scope of the Investigation**

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this investigation.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

## **Appendix II**

### **List of Topics Discussed in the Preliminary Decision Memorandum**

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Injury Test
- V. Alignment
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Subsidies Valuation
- VIII. Analysis of Programs
- IX. Calculation of the All-Others Rate
- X. Recommendation

[FR Doc. 2020-26627 Filed: 12/2/2020 8:45 am; Publication Date: 12/3/2020]